PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute : Industrial Dispute between the workmen and the management of Bharat Printing Press, Chandrasadan, Station Road, Dharwar.

Award of the Labour Court, Hubli—published.

Read the following papers :

(1) Letter No. 119/71-72, dated 15th/21st April 1971 from Sri W. K. Kulkarni, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI.

Dated this 6th April 1971

Reference (ID) LCH Claim No. 15/1970.

Presiding Officer:

Sri W. K. Kulkarni, B.A., (HONS) L.L.B.,

Claimant :

Sri M. C. Sheelvant, his cause sponsored by the General Secretary, Dharwar District Printing Press Workers' Union, Simpigalli, Hubli.

Respondent :

The Management of Bharat Printing Press, Chandrasadar Station Road, Dharwar.

1. This is a reference made by the State Government U/s 10 (1) (c) of the I. D. Act 1947. The claimant alleges as following in the claim statement.

2. The Respondent is a Printing Press at Dharwar called Bharat Printing Press. That the Respondent employed the claimant in its Printing Press as a helper in the Photo Off-set section, from June 1967 on a monthly salary of Rs. 70. That on 4th February 1970 the Respondent abruptly terminated his services without assigning any reason. The Respondent appears to have been prompted to do so, because the claimant was an active worker of the Dharwar District Printing Press Workers Union, which fact the Respondent did not like. Thus this is a case of victimisation and unfair Labour Practice. The termination is illegal. No notice was given to the claimant prior to the termination. The claimant therefore asks for reinstatement with back wages at the rate of Rs. 70 p. m.

3. The Respondent by its written statement contended as following: That the claimant was appointed only as a learner on 2nd November 1969 on a monthly pay of Rs. 70. It is false that he was appointed from June 1967. That the claimant was appointed on 2nd November 1969 only for a temporary period of about 3 months in order to cope with the urgent work of nationalised Government Text Bookss printing that was entrusted to the Respondent. Thus the appointment of the claimant was on a purely temporary basis. That the claimant remained absent from 30th January 1970 to 28th February 1970 and thereafter his name was removed from the muster roll. Thus it was the claimant who voluntarily left the job and the Respondent did not terminate his services. Since the claimant has left the job voluntarily, he is not entitled to any relief such as reinstatement or compensation. The Respondent does not know whether the claimant is an active worker of the Union and the Respondent denies that the claimant was removed because he was an active worker of the Union. That the Respondent has learnt that the claimant has obtained a job somewhere else and so he is not entitled to any relief. The employment of claimant was purely temporary and at present Respondent has no work to offer him. So the claimant cannot be reinstated.

4. At the hearing the claimant is examined as WW-1 and on behalf of the Respondent one of the partners of the firm owing

the press. Sri Madhav Huddar is examined as MW-1. Besides several documents are produced by both sides and marked as Exhibits. I have heard the learned Advocates appearing on both sides.

5. The first and important question to be decided is whether the claimant himself voluntarily left the job or whether his services were terminated by the Respondent. Then the claimant con ends that he was working under the Respondent since June 1967. But the Respondent says that the claimant was employed by it only from 12th November 1969 till about the end of January 1970 when the claimant Voluntarily left. The respondent has relied upon the muster rolls and wage register in this behalf. Ex. M-1 is the attendance Register in which the workers have signed each day for their attendance. In this Register the name of the claimant is not at all shown for the month of November 1969. Previously also his name does not appear in this Register. The claimant's name is entered in this register only for the months of December 1969 and January 1970 and he has signed in these registers for the whole of December 1969 and in January 1970 till the end of 28. Then the Respondent relies upon the employment register Ex. M-4 which relates to the period from June 1968 till and inclusive of February 1970. In this Register the name of the claimant appears for the first time in 1969 November from 12th. His attendance is marked from 12th November till 28th January 1970. For February 1970 also his name is shown but marked absent and ultimately there is a remark 'left service without intimation' and the name was removed from March 1970 from this register. Then Ex. M-3 is the wage register maintained under the Mysore Minimum Wages Rules 1958. This register shows that the claimant has been paid the entire salary for the month of November 1969 and also December 1969. Relying on these documents, the Respondent contends that it did not employ the claimant at any time prior to 1969 November. However it may be noted that there are certain discrepancies in these registers, for example in Ex. M 1 the name of the claimant with his signature is not at all shown for November 1969, though the Respondent admits that the claimant was employed by it from 12th November 1969. Then again, though according to the Respondent the claimant joined only on 12th November 1969, the wage Register shows that he was paid the full salary for the month of November 1969. Then again in employment register Ex. M-4 for the month of November

1969 he was described as 'Helper'. Later it was scored out and word 'learner' written instead of it. There is a similar scoring out of designation in the case of another worker P. R. Desai for the same month. From these circumstances it was contended for the claimant that the Respondent was maintaining the records as they suited it and they are not reliable. To show that he joined Respondent in June 1967, the claiment mainly depended upon the receipts Ex W-2 to W-13 which the Respondent admitted to have passed. Now these receipts are for small sums of Rs 2 or so from the period 7th March 1967 to 8th September 1969. The claimant stated that when he was working under the Respondent from 1967 he used to take advances now and then and returned part of it now and then to the Respondent, for the receipt of which Respondent passed these receipts. The Respondent having admitted that these receipts were passed either by itself or its Managers, contended that the father of the claimant was a book binder and he used to do binding work for the Respondent on contract basis and for that purpose Respondent used to advance money to the claimant's father now and then and he after deducting the charges of the binding work done by him, used to return the balances for which these receipts were passed by the Respondent. It is pertinent to note that Ex. W-2 to W-4 and W-9 to W-13 are issued in the name of M. C. Sheelvant who is claimant. Then the other receipts are issued in the name of Sheelvant which is the surname of the claimant. I fail to see if the receipts were meant for the father why they should be passed in the name of this young boy. According to the Respondent the contract was with the father and one would expect the receipts in the name of the father. The Respondent contends that because the money was returned by the claimant the receipts were passed in his name. I am wholly unable to accept these explanations. The claimant is a young boy and when questioned in this behalf in his cross examination, he stated that about 6 years back that is prior to 1967, only once his father did binding work for the Respondent and he denied all the suggestions made by the Respondent in this behalf. I have no hesitation in rejecting the explanation of the Respondent. Once the Respondent admits that these receipts are passed by it noon signature has been scord out by the Respondent. On the other hand Sri Madhav Hudder stated that, that day claimant took their Bicycle while going home for food and did not return it and thereupon his brother sent him back home to bring the Bicycle and at that time the claimant himself, scored out his signature.

This, in my opinion, is highly improbable. A worker will never be allowed to temper the records in the possession of the Management. I hold that this scoring out of the signature must have been done by some one belonging to the Management. This will only show that the Management was interested in creating false records and its evidence cannot be accepted.

7. Then Sri V. N. Apte, the learned Advocate for the Respondent, argued that the registers are signed by the Labour Officer sometimes and if the claimant was really working prior to 1969 November, then the Labour Officer would not have quietly signed the registers for having checked without raising any objection. It is true, that Ex M-4 shows that some Labour Officer has initialled for having checked it on 4th March 1969. The names of 8 workers were entered at that time. But in view of the other evidence available in this case. I am not prepared to hold only on the strength of these initials that the concerned Labour Officer questioned each worker and then signed the register after ascertaining whether the names of all workers were entered or not. He might have signed as a matter of formality. Thereafter the only signature I find in this register of the Labour Officer is on 4th May 1970, when admittedly the claimant was not working there.

8. Then the claimant in his evidence stated that on 28th January 1970 in the afternoon he was driven out and was also told at that time by the Management that he was removed. The claimant says that on the next day *i.e.*, 29th January 1970, He sent a leave letter under certificate of posting Ex. W-1 to the Respondent asking for some leave as his body was aching by the beating previous day. Now there is a presumption due to this certificate of posting Ex. W-1, that such a letter was sent and though claimant called upon the Respondent to produce that letter. the reply of the Respondent was that no such letter was received by it. This again would show how far the version of the Respondent should be accepted. The claimant frankly admitted in his cross-examination that in this letter he only asked for leave and he did not say anything regarding his removal. Sri Apte, the learned Advocate for the Respondent, contended that if the claimant was really removed that day by the Respondent then he would have protested against the sam in his letter and in the absence of that I should infer that the claimant himself left the job. I am unable to accept this contention. Although he was told by the Respondent that he should

not come for work. The claimant might have thought that after the leave period, he would persuade the Respondent to take him back. At this stage he might not have been in a contesting or fighting mood. The records of the Conciliation proceedings were called by me at the instance of the claimant and that file is before me. It shows at page 34 a typed application sent by the General Secretary of the Dharwar District Printing Press Workes' Union to the Labour Officer, Hubli. It is dated 10th February 1970 though received in the office of the Labour Officer on 26th February 1970. The contents of this application are important. By this application the General Secretary stated that though the claimant (Sheelvant) was working with the Respondent since 3 years as a Helper, he was removed all of a sudden. That the revised Minimum Wages were not implemented and so the Union came into existence and the Respondent told the claimant either to come out from the Union or to go out of the Press. When the claimant refused to resign the Union, his services were terminated with effect from 4th February 1970 and the same was illegal and the General Secretary of the Union called upon the Labour Officer to initiate conciliation proceedings for the reinstatement of the claimant with back wages. As I noticed earlier, the letter is dated 10th February 1970. It appears the claimant after he was refused work on or about 28th February 1970 approached the General Secretary of the Union who thereafter thought of this application. The very circumstance that within a short period of 12 to 18 days, this application is addressed to the Labour Officer would show that the claimant did not leave the work voluntarily but he was removed by the Respondent. If he had voluntarily left the job, he had no reason to do all these things. These circumstances would show the truth of his case.

7. Lastly it appears that some conciliation proceedings were pending at the time of claimants' removal between the Management and some of its workers including the claimant, regarding some other demands of the workers. In the case of those conciliation proceedings, the Labour Officer questioned both the Management and worker and in the file I find his factual report in which the relevant portion is marked as Ex.—W 15. This extract would show that the Respondent Management admitted before the Labour Officer that because the claimant was wasting his time in chit-chating with other workers and thereby troubling others and because he was temporary workman, the management terminated his services without holding any enquiry. This

admission is relied upon on behalf on the claimant to show that the Management itself terminated the services. It is true that the Labour Officer has not recorded the verbatim statement of the Management and the report is only a summary of what was stated by both sides. But I see no reasons for the Labour Officer to make any false summary. Though the admission is not in the form of a verbatim statement, it is clear from the summary that the case of the Respondent was that it had terminated the services of the claimant. From all these circumstances I am not inclined to hold that the claimant did not leave the work voluntarily but his services were terminated by the Respondent without holding any enquiry and without giving him any opportunity. It was contended for the Respondent that because there was temporary extra work in the Press due to the some publiaction of Government text books, the claimant was appointed only for a temporary period of 3 months or so and hence it had every right to terminate his services without holding any enquiry. No order of appointment was issued by the Respondent to the claimant. There is nothing to show that the claimant was appointed on purely temporary basis. On the other hand the entry of his name in the register along with others from November 1969 would show that he had the same status as all other workers. In the absence of anything to show that he was purely on temporary basis, it has to be presumed that his tenure was permanent like other workers. In fact the name of the claimant was continued in the register even for February 1970. This would show that he was to continue like other workers Sri Madhav Huddar MW-1 in his evidence did not at all refer to the temporary nature of the claimant's job. So even on the assumption that the claimant was employed by the Respondent only in November 1969 his services could not have been terminated in the manner done, as there is no evidence that he was appointed for a particular period. I have already discussed and held that the claimant must have been employed by the Respondent from June 1967.

8. Thus my finding is that the termination of the services of the claimant is illegal. The claimant however stated that after 4 or 5 months of his removal, he got a job in another industry namely Ti-wac Factory Dharwar. The claimant's Advocate Sri Patil has filed a memo stating that in view of this circumstance, the claimant does not press for reinstatement. Thus the only question to be decided is above the compensation to be awarded to the claimant. The claimant was getting a salary of Rs. 70 p.m. If he were reinstated then perhaps there would have been direction to the Respondent to pay his back wages or substantial

ortion of it. But he is not to be reinstated and the claimant got other job 4-5 months after removal. The exact date of his employment in other industry (Ti-wac) is not known. However the claimant stated that he got other employment 4-5 months after removal. Hence, I think it proper that he should be awarded 4 months salary during which period he remained unemployed and that would constitute sufficient compensation. Hence my AWARD.

AWARD

It is held that the termination of the services of the claimant is illegal. However since the claimant does not press for reinstatement, I do not pass an order of his reinstatement. However the Respondent Management will pay to the claimant worker Rs. 280 as compensation for wrongful termination of his services. There will be no orders as to costs of this proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.

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ORDER

Bangalore, dated 3rd May 1971.

S. O. 1007.—WHEREAS by State Government Order No. FCL 537 LLD 70, dated 14th October 1970, the Industrial Dispute between the workmen and the management of Bharat Printing Press, Chandrasadan, Station Road, Dharwar was referred to the Labour Court, Hubli for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said Award as above, in the *Mysore Gazette*.

[No. FCL 51 LLA 71.]

By Order and in the name of the President of India,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and
Labour Department

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